

ESTTA Tracking number: **ESTTA236050**Filing date: **09/11/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Notice of Opposition**

Notice is hereby given that the following party opposes registration of the indicated application.

**Opposer Information**

Name	Kunzler & McKenzie		
Entity	LLC	Citizenship	Utah
Address	8 East Broadway Suite 600 Salt Lake City, UT 84111 UNITED STATES		

Attorney information	Alan L. Edwards Kunzler & McKenzie 8 East Broadway Suite 600 Salt Lake City, UT 84111 UNITED STATES docket@kmiplaw.com,aedwards@kmiplaw.com,tyler@kmiplaw.com Phone:801-994-4646
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**Applicant Information**

Application No	77399957	Publication date	08/26/2008
Opposition Filing Date	09/11/2008	Opposition Period Ends	09/25/2008
Applicant	Mobile Air, Inc. 800 E. Mandoline Ave. Madison Heights, MI 48071 UNITED STATES		

**Goods/Services Affected by Opposition**

Class 037. All goods and services in the class are opposed, namely: Drying and dehumidification services for structures, building contents and manufacturing plants that have been damaged or destroyed by water
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**Grounds for Opposition**

Priority and likelihood of confusion	Trademark Act section 2(d)
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**Mark Cited by Opposer as Basis for Opposition**

U.S. Registration No.	3007106	Application Date	04/30/2004
Registration Date	10/18/2005	Foreign Priority Date	NONE
Word Mark	DRY FORCE		
Design Mark			
Description of	NONE		

Mark	
Goods/Services	Class 037. First use: First Use: 2003/01/21 First Use In Commerce: 2003/01/21 Restoration services in the field of water removal from floods; floodwater removal services

Attachments	76589849#TMSN.jpeg ( 1 page )( bytes ) DRYFORCE_NoticeOppositionTRG.pdf ( 5 pages )(87741 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Alan L. Edwards/
Name	Alan L. Edwards
Date	09/11/2008

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

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In the matter of trademark application Serial No. 77/399,957  
For the mark MOBILE DRY FORCE  
Published in the Official Gazette on August 26, 2008

DRY FORCE, INC.;	)	
	)	
	)	
Opposer,	)	Opposition No. _____
vs.	)	
	)	
MOBILE AIR, INC.;	)	
	)	
Applicant.	)	
	)	

**NOTICE OF OPPOSITION**

Dry Force, Inc. (“Opposer”), an Arizona Corporation with a business address of 1819 North Rosemont Dr., Suite 103, Mesa Arizona 85205, believes that it is and will be damaged by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

1. Opposer markets restoration services in the field of water removal from floods and floodwater removal services under the mark DRY FORCE (“Opposer’s Mark”), which Opposer has been using as a service mark in connection with such services for more than five years.
2. Opposer markets its floodwater restoration services throughout the country including Tennessee, Kansas, Texas, Arizona, and New Mexico.

3. Opposer plans to market its floodwater restoration services in the Great Lakes area including Michigan.
4. Opposer owns Registration No. 3,007,106 for DRY FORCE and design for restoration services in the field of water removal from floods and floodwater removal services, registered on October 18, 2005.
5. Applicant filed an intent-to-use application on February 19, 2008, for the mark MOBILE DRY FORCE (“Applicant’s Mark”), Serial Number 77/399,957, for *Drying and dehumidification services for structures, building contents and manufacturing plants that have been damaged or destroyed by water* in Class 037, which the Trademark Office published for opposition in the Official Gazette on August 26, 2008.
6. Opposer, since prior to the filing date of application Serial Number 77/399,957 for Applicant’s Mark, has continuously advertised and promoted its floodwater removal services identified and distinguished by Opposer’s Mark, and by reason of such advertising and promotion, Opposer enjoys valuable goodwill with respect to Opposer’s Mark in the field of floodwater removal and related services.
7. Applicant’s mark is intended for use on *Drying and dehumidification services for structures, building contents and manufacturing plants that have been damaged or destroyed by water*, all services which are identical or nearly identical to Opposer’s services.
8. Opposer’s and Applicant’s services are intended for sale or sold in overlapping geographic markets across the country.

9. Applicant's Mark is confusingly similar to Opposer's Mark as both share the identical dominant and distinctive phrase DRY FORCE.
10. The use of Applicant's Mark to identify the source of floodwater removal services such as *Drying and dehumidification services for structures, building contents and manufacturing plants that have been damaged or destroyed by water* is likely to create confusion and cause consumers mistakenly to believe that Applicant's services are endorsed or sponsored by or affiliated or connected with Opposer, to the damage and injury of the public and to the damage and injury of Opposer.
11. The goodwill in Opposer's Mark would be damaged by the registration of Applicants Mark for the goods described in application Serial Number 77/399,957.
12. By reason of the foregoing, the application for Applicant's Mark for *Drying and dehumidification services for structures, building contents and manufacturing plants that have been damaged or destroyed by water* is likely to cause confusion with Opposer's Mark and is thus not registrable under Section 2(d) of the Trademark Act of 1946 (15 U.S.C. § 1052(d)).

WHEREFORE, Opposer prays that this Opposition be sustained and that application Serial Number 77/399,957 be refused registration.

Opposer has submitted the filing fee of \$600.00 pursuant to the electronic filing of this Notice of Opposition.

Please recognize Alan L. Edwards, Tyler R. Goucher, Brian C. Kunzler, David J. McKenzie and Bruce R. Needham, members of the Bar of the United States District Court for the District of Utah, all with the firm of Kunzler & McKenzie, as Opposer's attorneys to

prosecute this Notice of Opposition and to transact all business in the United States Patent and Trademark Office in connection herewith. Please address all communications to:

Alan L. Edwards  
Kunzler and McKenzie  
8 East Broadway, Suite 600  
Salt Lake City, Utah 84111

RESPECTFULLY SUBMITTED this 11 day of September 2008.

/Alan L. Edwards/

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*Attorney for Applicant*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 11 day of September 2008, a true and correct copy of the foregoing NOTICE OF OPPOSITION was served by the following method(s) on the person(s) indicated below:

<p>DOUGLAS W. SPRINKLE GIFFORD KRASS ET AL. PO BOX 7021 TROY, MI 48007-7021</p>	<p><u>  X  </u> US Mail, Postage Prepaid <u>      </u> Facsimile <u>      </u> Hand-Delivery <u>      </u> Federal Express</p>
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DATED and SIGNED this 11 day of September 2008.

/Lindsey Livingston/

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Lindsey Livingston  
Assistant to Alan Edwards